

Title	Petition and Order for Appointment of Guardian ad Litem– Probate (revise form DE-350/GC-100)
Summary	This form would be modified by eliminating a reference to the appointment of a guardian ad litem in a juvenile proceeding because of a change in the law affecting such appointments in juvenile dependency cases. A second revision would identify another Judicial Council form by its newly revised form number. A third revision would add a sentence advising that a guardian ad litem is not the same as a guardian of the person or estate.
Source	Probate and Mental Health Advisory Committee
Staff	Douglas C. Miller, 415–865–7535, douglas.miller@jud.ca.gov
Discussion	<p>Form DE-350/GC-100 is used in probate proceedings to request the court to appoint a guardian ad litem for a minor, an incapacitated person, an unborn or unascertained person, and for some other persons, including unascertained members of a class. The second page of the form includes an order granting the petition.</p> <p>The text box below the caption at the top of page 1 of this form gives instructions for the proper use of the form, including advice as to when similar forms designed for use in civil, family, or juvenile proceedings should be used instead of this form.</p> <p>In the next-to-last sentence of the existing instructions, the phrase “family <i>or juvenile</i> proceeding” would be changed to “family <i>law</i> proceeding,” and the reference to Judicial Council form FJ-200 would be changed to form FL-935.</p> <p>These changes are necessary because of changes in juvenile dependency law caused by the repeal of Welfare and Institutions Code section 326 and the enactment of section 326.5, effective July 1, 2001. (Stats. 2000, ch. 450, §§ 2–4.)</p> <p>Repealed section 326 authorized the appointment of a guardian ad litem in juvenile court proceedings in a manner similar to the standard way they are appointed in civil and probate matters: on application, using an application form similar to form DE-350/GC-100, Judicial Council form FJ-200.</p> <p>New section 326.5 requires the Judicial Council to adopt a rule of court concerning the appointment of a guardian ad litem for the (proposed) dependent child in a juvenile dependency proceeding that</p>

conforms to the requirements of a federal statute. In response to this mandate, the council adopted California Rules of Court, rule 1438 effective July 1, 2001 (amended effective January 1, 2003), and rule 1448 effective January 1, 2003. These rules provide for the appointment of a specialized type of guardian ad litem for a child in a juvenile dependency case, in which the standard method of appointment and form FJ-200 are no longer used.

Form FJ-200 is now being revised to apply to family law matters only. It will be redesignated as form FL-935.

A third proposed revision of the instructions to form DE-350/GC-100 would add the following sentence at the end: “A guardian ad litem is NOT the same as a guardian of the person or of the estate.”

This change is proposed by the Probate and Mental Health Advisory Committee because of its concern that some persons using the form, particularly self-represented persons, might become confused by the similarity between the term “guardian” and the phrase “guardian ad litem.” They could believe that the appointment of a guardian ad litem would complete the process for the appointment of a probate guardian of the person or estate of a minor child.

The appointment of a guardian ad litem is a very preliminary step in a probate proceeding, often handled on an ex parte basis. The appointment of a probate guardian, on the other hand, may be a fully contested matter, requires notice, may take weeks or months to complete, and requires a completely different Judicial Council form petition, GC-210, *Petition for Appointment of Guardian of Minor*.

The advisory committee also notes that in most probate matters the order is separate from the petition. If this petition is set for a regular probate court hearing rather than presented or heard ex parte, the court may not have the petition and the attached order before it when the matter comes on for hearing on a regular probate calendar. Therefore, the order might not be signed at all or might not be signed and returned to the petitioner in a timely manner.

The advisory committee solicits the public’s comments concerning separation of the order from the petition and adoption of a new form order as a separate form.

A copy of revised form DE-350/GC-100 is attached at pages 3–4.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <h1 style="text-align: center;">DRAFT 4</h1> <h1 style="text-align: center;">3/28/03</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
IN RE THE MATTER OF: _____	
<p style="text-align: center;">PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM—PROBATE</p> <p style="text-align: center;"><input type="checkbox"/> EX PARTE</p>	CASE NUMBER: _____

NOTE: This form is for use in proceedings under the Probate Code, except for compromise of an action to which a minor or incompetent person is a party. A person seeking the appointment of a guardian ad litem in a civil proceeding should use form 982(a)(27). A person seeking the appointment of a guardian ad litem in a family law proceeding should use form FL-935. An individual may not act as a guardian ad litem unless the individual is an attorney or is represented by an attorney. A guardian ad litem is NOT the same as a guardian of the person or the estate.

1. Petitioner (name): _____ is:
 - a. ☐ personal representative of the estate of:
 - b. ☐ guardian of:
 - c. ☐ conservator of:
 - d. ☐ trustee of:
 - e. ☐ other interested person (specify capacity): _____

2. This petition seeks the appointment of the following person as guardian ad litem (state name, address, and telephone number): _____

3. The guardian ad litem is to represent the interests of the following person (state name, address, and telephone number): _____

4. The person to be represented is:
 - a. ☐ a minor (date of birth): _____
 - b. ☐ an incapacitated person
 - c. ☐ an unborn person
 - d. ☐ an unascertained person
 - e. ☐ a person whose identity or address is unknown
 - f. ☐ a designated class of persons who are not ascertained or are not in being

5. Appointment of a guardian ad litem arises out of issues regarding:
 - a. ☐ the execution of a disclaimer under Probate Code section 277 (specify details in Attachment 5a).
 - b. ☐ the representation of the interests of a spouse alleged to lack legal capacity (Probate Code, §§ 3112 and 3140) (specify details in Attachment 5b).
 - c. ☐ the consent to modification or termination of trust (Probate Code, § 15405) (specify details in Attachment 5c).
 - d. ☐ the approval and settlement of claims against a deceased settlor (Probate Code, § 19029) (specify details in Attachment 5d).
 - e. ☐ the representation of a minor, incapacitated person, or other person identified in Probate Code section 1003(a) in a proceeding under the Probate Code (Probate Code, § 1003(a)) (specify details in Attachment 5e).
 - f. ☐ other (specify details in Attachment 5f).

6. The appointment of a guardian ad litem is:
 - a. ☐ proper because the minor has no guardian of his or her estate.
 - b. ☐ necessary for the following reasons (specify details in Attachment 6b).

IN RE THE MATTER OF: _____	CASE NUMBER: _____
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7. The proposed guardian ad litem's relationship to the person he or she is representing is:
- ☐ related (*state capacity*):
 - ☐ not related (*specify capacity*):
8. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person he or she is representing as explained in Attachment 8 and has no interest adverse to the interests of that person.
9. Notice of this proceeding:
- ☐ should be dispensed with (*specify reasons for ex parte request in Attachment 9a*).
 - ☐ will be given to the parties named in Attachment 9b.
10. Number of pages attached: _____
Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF ATTORNEY)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem and I declare under penalty of perjury under the laws of the State of California that the foregoing petition is true and correct.
Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PROPOSED GUARDIAN)
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☐ CONSENT OF MINOR 12 YEARS OF AGE OR OLDER (*Optional*)

I, (*name*): _____, am (*specify age*): _____ years of age and hereby nominate
(*name*): _____ to be my guardian ad litem to represent my interests for the
reasons set forth in items 5 and 6 of this petition.
Date: _____

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF MINOR 12 YEARS OF AGE OR OLDER)
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ORDER ☐ EX PARTE

THE COURT FINDS that

- ☐ All notices required by law have been given.
 - ☐ Notice is dispensed with.
- It is reasonable and necessary to appoint a guardian ad litem for the person named in item 3 of the petition, as hereinabove requested.

THE COURT ORDERS that (*name*): _____
is hereby appointed guardian ad litem of (*name*): _____
for the purposes set forth in items 5 and 6 of the petition.

THE COURT FURTHER ORDERS that
the guardian ad litem ☐ is ☐ is not _____ authorized to waive or disclaim any substantive rights of the represented party
without further order of this court.
Date: _____

JUDGE OF THE SUPERIOR COURT	<input type="checkbox"/> SIGNATURE FOLLOWS LAST ATTACHMENT
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